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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group on a
draft optional protocol to the Convention
on the Rights of the Child on involvement
of children in armed conflicts
Fifth session
Geneva, 11-22 January 1999

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains a summary of the comments submitted by the Governments of Argentina, Brazil, Croatia, Switzerland, Turkey and Uruguay.

GE.98-14955 (E)

Argentina

[Original: Spanish]
[16 October 1998]

1. In Argentina's view the three main topics currently being discussed by the working group and raised in the report (E/CN.4/1998/102) are the following: (i) the age limit for participation in armed conflicts and for compulsory recruitment; (ii) the age limit for voluntary recruitment; and (iii) the age limit for entering military schools. In addition to those main points, discussion centred on whether to mention the recruitment of children by non-governmental armed groups, in accordance with new article A.

Age limit for the participation and recruitment of children

2. With regard to articles 1 and 2 of the draft, contained in annex I, Argentine legislation was revised in 1994 and Argentina's system of compulsory military service at age 18 was changed to a voluntary system which, although it sets the age limit for joining the armed forces at 18, extends to the age of 24.

3. Consistently with the foregoing, Argentina has taken a clear position regarding the age limit to be set in the protocol, a position it confirmed in the declaration it made in respect of article 38 upon ratifying the Convention on the Rights of the Child, to the effect that "... it would have liked the Convention categorically to prohibit the use of children in armed conflicts; such a prohibition exists in its domestic law, which, by virtue of article 41 of the Convention, it shall continue to apply in this regard".

4. The full text of Act No. 24.429 relating to voluntary military service is attached*.

Age limit for admission to educational and vocational training centres

5. In Argentina's view a distinction should be made, in respect of article 2, paragraph 4 of the draft, between high schools (liceos), which are proper secondary establishments and not military in nature, and military schools or academies.

6. The last two years of military high school (liceo militar) - during which pupils generally reach the age of 16 - include military instruction for pupils as part of the curriculum, but no provision is made for their participation in armed conflicts.

7. The age limits for admission to institutes for the training of commissioned and non-commissioned officers are 18 years for commissioned officers and 16 years for non-commissioned officers, with no provision in either case for their participation in armed conflicts.

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* Available for consultation in the files of the Secretariat.

Recruitment of children by non-governmental armed groups

8. Concerning new article A, it is Argentina's understanding that if non-governmental armed groups are participating in hostilities as combatants, they are subject to the rules of international humanitarian law which prohibit the recruitment of children. If they are not combatants, the recruitment of children constitutes a violation of domestic law.

Brazil

[Original: English]
[6 November 1998]

1. The problem of involvement of children in armed conflicts is a matter of concern and Brazil supports initiatives aimed not only at increasing international awareness of the problem, but also at designing a strategy to protect children and adolescents from abhorrent traumas caused by conflicts.

2. In this context, the working group assumes a very special and relevant role. There are some core questions to be solved before the conclusion of the drafting of the optional protocol. Brazil believes that there is room for progress towards a consensus among the vast majority of countries. The paper entitled "Chairman's perception" (E/CN.4/1998/102, annex II) is a good starting point, as a way of congregating the majority of views on this subject.

Croatia

[Original: English]
[4 November 1998]

1. Regarding the involvement of children in armed conflicts, the Constitution of the Republic of Croatia and the Defence Act prescribe that military service is mandatory for all able citizens and consists of recruitment liability, a term of training service in the armed forces and obligation to serve in the reserves. However, the Defence Act also prescribes that the recruitment liability starts in the calendar year in which a citizen completes 17 years of age, continues until assigned for a term of service, followed by military reserve status. Assigned for a term of military service are recruits assessed as able for military service in the calendar year in which they have completed 19 years of age. A recruit who in this calendar year has not finished the secondary school he has been attending is sent to serve when he has finished school, but not later than the end of the calendar year in which he will complete 21 years of age. A recruit enrolled in university or other higher education institution is sent for military service after graduation, unless he himself requests to discharge his military duty at an earlier stage.

2. In exceptional cases, in time of war or if a direct threat is posed to the independence and integrity of the Republic of Croatia, the President of the Republic can issue an order to mobilize for military service those who

have completed 17 years of age. As the term of service in the Croatian armed forces is 10 months, the obligation for such conscripts to serve in the reserve forces commences at the age of 18.

3. Therefore, persons younger than 18 are not liable to serve in the reserve forces because they have not served the term of military training, so in the event of an armed conflict they cannot be actively engaged in the conflict.

4. During the aggression against Croatia (1991-1995) many children became victims in the war-affected areas. However, the Republic of Croatia, i.e. Ministry of Defence, never practised mobilization in contravention of the Defence Act, to the effect that persons younger than 18 were never recruited for serving the military term.

Switzerland

[Original: French]
[13 October 1998]

1. In conformity with its humanitarian tradition and as a depositary of the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, Switzerland devotes the greatest attention to the fate of war victims.

2. Children are particularly exposed to the consequences of armed conflicts. First, they are very vulnerable victims, and secondly they are involved in fighting in several parts of the world. For this reason, Switzerland is committed to ensuring that children enjoy specific protection in armed conflicts.

3. In Switzerland's view, to reduce substantially the suffering inflicted on children by war, their involvement in armed conflicts should be excluded. The adoption of a protocol on this question would mark a decisive contribution to this end. In this connection, Switzerland would like the optional protocol to fill a gap left in the Convention on the Rights of the Child (hereafter: the Convention) and set the age limit for the involvement of children in hostilities at 18 years. It is recognized that children under the age of 18 need special protection to enable their personalities to develop fully and harmoniously. There is no reason for lowering the limit for this protection precisely in a sphere in which the rights of the child are exposed to grave danger.

4. Moreover, no distinction should be drawn between "direct involvement" and "indirect involvement" (through the performance of auxiliary services) or between the compulsory or voluntary nature of recruitment. As the optional protocol must take a substantial step forward in relation to article 38 of the Convention, it must send an unequivocal message indicating that it is the principles of recruitment and participation which must be prohibited, rather than their forms.

5. Considering the nature of recent conflicts, moreover, Switzerland supports the insertion of a provision prohibiting the recruitment of persons under 18 years of age by non-governmental armed groups.

6. In Switzerland's view it is clear that the Committee on the Rights of the Child must be able effectively to oversee compliance by States parties with their obligations. Such oversight would make it possible to react swiftly to violations of the protocol's provisions. Requests for clarifications and the organization, if necessary, of hearings and inquiries by the Committee, in consultation with the States parties concerned, will enable concrete steps to be taken to protect the rights of children. Article D, contained in annex I of the working group's report, might be used as a model for negotiations on this issue.

7. In order for the new instrument to be effective, there is a need to ensure that States parties adopt penal provisions punishing recruitment that is contrary to the protocol, not to permit reservations and to insert a reference to States parties' obligation to disseminate the protocol's principles and provisions.

8. Lastly, since there were considerable divergences on essential points of the protocol at the latest session of the working group, Switzerland believes that the Chairman of the working group should be given the time needed to conduct widespread informal consultations with Governments and the international actors concerned in order to reach agreement, as advocated in resolution 1998/76.

Turkey

[Original: French]
[25 September 1998]

1. Under the amended article 2 of the Turkish Act relating to Military Service, No. 1111 of 21 June 1997, "The period within which every male may be called up for military service shall be determined by his civil status. It shall begin on the first day of the month of January in the year of his twentieth birthday and extend for a period of no more than 21 years, up to the first day of the month of January in the year of his forty-first birthday".

2. It is therefore unlawful in Turkey to call up children of 16, 17 or 18 years of age for military service. In view of the foregoing, the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts is acceptable to the Turkish Government as drafted.

3. The Turkish Government would also like to emphasize the importance it attaches to retaining article 2 of the paper entitled "Chairman's perception" (E/CN.4/1998/102, annex II) as it stands. Paragraph 3 is particularly important, as it covers military education and career military training. Career military training, which begins at the age of 15 in Turkey, should not be regarded as constituting involvement of children in armed conflicts. For this reason, if paragraph 3 of article 2 on education and vocational training is not retained, the Turkish Government will not be able to subscribe to the above-mentioned protocol.

Uruguay

[Original: Spanish]
[20 November 1998]

1. The Permanent Delegation of Uruguay is pleased to provide below a summary of the main aspects of Uruguay's situation and position in international negotiations.

2. Uruguay has a professional army; enlistment is exclusively voluntary and takes place from the age of 18 years. A military career is therefore one option for vocational training. Military instruction, including the handling of weapons, takes place within this context.

3. Although the international legal standards in force set 15 as the age limit for entry into the armed forces and participation in hostilities, Uruguay declared on ratifying the Convention on the Rights of the Child that it would apply the 18-year age limit to persons under its jurisdiction in regard to the provisions of article 38, paragraphs 2 and 3.

4. In this connection, even before the commencement of negotiations on the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, Uruguay supported the raising of the age limits set by the Convention in article 38 to 18 years of age. This should apply both to participation in hostilities, whether direct or indirect, as it is impossible to distinguish between the two in practice, and to entry into the armed forces, whether voluntary or compulsory, as a way of preventing participation in hostilities and because of the nature of the work, which is inherently dangerous.